

California Victim Compensation and Government Claims Board
Open Meeting Minutes
June 21, 2012, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Leslie Lopez, Deputy Secretary and General Counsel, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, June 21, 2012, at 10:00 a.m. Also present was Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller. Board member Michael Ramos, San Bernardino County District Attorney, participated in the meeting via teleconference and was located at 303 West 3rd Street, 6th Floor, San Bernardino, California.

Board staff present included Julie Nauman, Executive Officer; Kathy Cruz, Chief Deputy Executive Officer; and Kevin Kwong, Staff Counsel III. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Chairperson Lopez announced that the order of consideration of matters on the agenda would be changed. She stated that the Board would consider Items 11 and 12 first, the Claims of Ines Vila de Andreu and Alejandro T. Andreu, respectively.

Item 11. Claim of Ines Vila de Andreu
Claim Number G604891

William Olmstead was in attendance on behalf of Ines Vila de Andreu. Gary Qualset was in attendance on behalf of the State Controller's Office.

Mary Lundeen, Staff Counsel III, explained that Ines Vila de Andreu requested payment from the State Controller's Office in the amount of \$80,184.16 for proceeds related to the sale of 300 shares of Apple, Inc. common stock that were sent to the wrong person by the Unclaimed Property Division.

The State Controller's Office recommended that the claim be allowed in the amount of \$80,184.16 under authority of Government Code section 965 (agency pay).

Ms. Lundeen stated that Government Claims Program staff reviewed the claim and determined that it was complete and timely pursuant to Government Code sections 910 and 911.2. Based on its review of the claim and the recommendation from State Controller's Office, Government Claims Program staff recommended that the claim be allowed in the amount of \$80,184.16 under authority of Government Code section 965 (agency pay).

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$80,184.16 under authority of Government Code section 965 (agency pay).

Item 12. Claim Alejandro T. Andreu
Claim Number G604892

William Olmstead was in attendance on behalf of Alejandro T. Andreu. Gary Qualset was in attendance on behalf of the State Controller's Office.

Mary Lundeen, Staff Counsel III, explained that Alejandro Andreu requested payment from the State Controller's Office in the amount of \$80,184.16 for proceeds related to the sale of 300 shares of Apple, Inc. common stock that were sent to the wrong person by the Unclaimed Property Division.

The State Controller's Office recommended that the claim be allowed in the amount of \$80,184.16 under authority of Government Code section 965 (agency pay).

Ms. Lundeen stated that Government Claims Program staff reviewed the claim and determined that it was complete and timely pursuant to Government Code sections 910 and 911.2. Based on its review of the claim and the recommendation from the State Controller's Office, Government Claims

Program staff recommended that the claim be allowed in the amount of \$80,184.16 under authority of Government Code section 965 (agency pay).

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$80,184.16 under authority of Government Code section 965 (agency pay).

Item 1. Approval of Minutes of the May 17, 2012, Board Meeting

The Board voted to approve the minutes of the May 17, 2012, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment. No public comment was given.

Item 3. Executive Officer's Statement

Executive Officer Nauman announced that she had nothing to report.

Item 4. Contract Report

University Enterprises, Inc. (UEI)

UEI, an auxiliary organization of CSUS, provides student assistants to the VCGCB. Student assistants will continue to perform various duties including assisting staff with claims processing; assisting staff with accounting and administrative functions; assisting staff with community outreach; and other related tasks consistent with the goals and objectives of the area to which the student is assigned.

The original contract in the amount of \$60,000 was amended by the VCGCB to increase the number of hours available to students during summer break and to increase funding to accommodate the additional hours. The total amount of the contract in the amount of \$90,000 includes the amendment in the amount of \$30,000 to cover the increase in funding to accommodate the additional hours. The Board approved the contract.

Pitney Bowes

The VCGCB will purchase a new mail inserter and postage meter to replace existing equipment that has exceeded its useful life and expected volume for usage. The cost for the mail processing equipment will be \$52,923.41. The Board approved the purchase.

Department of Justice (DOJ)

DOJ will continue to provide legal representation in actively pursuing monies owed to the Restitution Fund via liens on civil suits and workers' compensation cases, employment litigation against the Board and its employees, and other related legal advice. The one-year contract in the amount of \$115,000, which was the same amount as the prior fiscal year, was approved by the Board.

Shandam Consulting

The contractor will provide critical on-call support for the VCGCB's network in the event of disruptions to network services and assist with network issues that require highly specialized expertise. The one-year contract in the amount of \$52,000 was approved by the Board.

Western Integrated

The contractor will provide critical, ongoing technical support for the Kofax document capture and management system for CaRES. The contractor will also assist VCGCB in tasks related to its compliance with AB 2408, which requires departments to move mission critical systems to a Tier 3 Data Center by June 2013.

The original contract in the amount of \$29,600 was amended by the VCGCB to extend the existing contract for an additional year and add 200 hours. The total amount of the contract in the amount of \$59,200 includes the amendment in the amount of \$29,600 and will extend the contract for an additional year and add 200 hours. The Board approved the contract.

Kiefer Consulting

The VCGCB issued a Request for Offer to obtain expert database development, application architecture, and web application development services for the continuation of the mission critical CaRES Modification Project (CaRES Mod). The VCGCB undertook the CaRES Mod effort to modify the current Compensation and Restitution System (CaRES), resulting in a more flexible, scalable and supportable application to meet the Board's needs. The Project required highly specialized and highly technical development expertise due to the complexity level of the effort. The Board approved the two-year contract in the amount of \$1,039,896.

Kiefer Consulting

The VCGCB issued a Request for Offer to obtain expert project management and business analysis services for the continuation of the mission critical CaRES Modification Project (CaRES Mod). The VCGCB undertook the CaRES Mod effort to modify the current Compensation and Restitution System (CaRES), resulting in a more flexible, scalable, and supportable application to meet the Board's needs. Due to the complexity of the project management effort, project management and business analysis experts with highly specialized and technical skill sets are required. The Board approved the two-year contract in the amount of \$559,728.

Item 5. Legislative Update

Jon Myers, Deputy Executive Officer, Legislation and Public Affairs Division, reported the following:

- AB 1531 (Fuentes), the VCGCB's first Government Claims Bill of 2012, appropriates \$859,738.51 to pay 273 claims approved by the Board from June 2011 through December 2011. The bill has been enrolled.
- SB 1065 (Kehoe), the VCGCB's second Government Claims Bill of 2012, appropriates \$167,329.15 to pay 93 claims approved by the Board from January 2012 through April 2012. The bill is currently going through the Assembly Appropriations Committee.
- SB 1299 (Wright), relating to victims of crime, extends the filing period for VCP applications from one year to three years and limits the conditions for acceptance beyond the filing period. The bill also includes technical changes to CalVCP statutes. The bill is currently in the Assembly Appropriations Committee.
- SB 1210 (Lieu), relating to the collection of restitution fines, enhances restitution collection authority for local jurisdictions to address the implementation of public safety realignment, as follows: (1) authorizes counties to collect up to 50 percent of the wages and trust account deposits of prisoners in county jails and to assess an additional 10 percent administrative fee on the amount owed for costs of collection; (2) requires an individual who violates post-release community supervision or mandatory supervision and is remanded back to jail to pay a revocation fine; (3) allows any portion of a restitution order that remains unsatisfied after a defendant is no longer on post-release community supervision or mandatory supervision to be enforced by the victim as a civil judgment; and (4) allows court-ordered debt over \$100 imposed by a juvenile court to be referred to the Franchise Tax Board for collection. The bill will be heard in the Assembly Public Safety Committee next week.
- SB 1371 (Anderson), relating to victim restitution, prohibits restitution fines and orders owed by offenders from being converted into prison time served. The bill has been enrolled.
- SB 1504 (Kehoe), relating to interests for claims and judgments against the State, provides that no interest will accrue on a claim against the state which the VCGCB submits to the Legislature and for which an appropriation is made until 180 days after enactment of the appropriation. The

bill also affects settlement and judgment claims submitted to the Legislature by the Attorney General. The bill has been chaptered.

- AB 2679 (Committee on Transportation), the Transportation Omnibus Bill, provides that the Department of Transportation currently has authority to administer government claims against that department of \$5,000 or less. This bill would change that limit to the amount allowed for a filing in small claims court, which, as of 2012, is \$10,000 or less. The bill is in the Senate Transportation and Housing Committee.

Item 6. Government Claims Program

Consent Agenda (Nos. 1- 409)

The Board adopted the staff recommendations for item numbers 1-409, with the following exceptions: item numbers 82 (G599562), 86 (G600421), 88 (G600574), 113 (G602767), and 397 (G603776) were removed and continued; and item number 94 (G601509) was removed to allow the claimant an opportunity to address the Board.

Consent Agenda Appearance

Item 94, G601509

Claim of Jason Riley

Jason Riley appeared and addressed the Board. There was no representation provided by the Franchise Tax Board.

Mary Lundeen, Staff Counsel III, explained that Jason Riley sought compensation from the Franchise Tax Board in the amount of \$3,360.67 in interest charges from an error calculating his salary during the period of November 6, 2006, through January 11, 2011.

The Franchise Tax Board, the State Controller's Office, and the Department of Personnel Administration recommended that the Board reject the claim.

Ms. Lundeen stated that Government Claims Program staff reviewed the claim and determined that it was complete and timely pursuant to Government Code sections 910 and 911.2. Based on its review of the claim and the recommendations from the Franchise Tax Board, the State Controller's Office, and the Department of Personnel Administration, Government Claims Program staff recommended that the Board reject the claim.

Mr. Riley explained that he has been employed as a tax attorney by the Franchise Tax Board since February 2005. In February 2011, the Franchise Tax Board informed him that he had been erroneously underpaid in the amount of \$16,518.00 over the past five years. He stated that he filed a government claim in December 2011 because applicable statutes and California Supreme Court cases provide that interest was available. He quoted from Civil Code section 3287 and stated that that code section applied to State employees and interest calculations for retroactive pay increases.

Chairperson Lopez asked Mr. Riley whether he was familiar with the constitutional limitation on the interest rate paid by the State.

Mr. Riley stated that he was not aware of a prohibition of interest. He stated that he asked Government Claims Program staff to provide him their recommendation to the Board. The only explanation that he received from staff was that the law did not provide for payment of interest on the type of salary adjustments that he requested under the relevant Department of Personnel Administration or State Controller's Office rules, regulations, or statutes. Staff did not provide a specific citation to any section with regard to the prohibition of interest. He stated that Civil Code section 3287 indicates that awards of interest are applicable to State agencies and to the State itself and it would apply to State employees and pay increases. He further stated that the facts of his

case were unique. Although other employees were impacted by the erroneous salary calculations, they were not impacted to the extent that he was. In addition, based on his legal research, he stated that it appeared that interest was available.

Chairperson Lopez explained that the Board is not set up to resolve disputes that involve complicated questions of law or fact.

The Board voted to adopt the staff recommendation to reject the claim.

Item 7. Claim of Rightway Site Services, Inc.

Claim Number G601298

Robert Harding appeared and addressed the Board on behalf of Rightway Site Services, Inc. Mellonie Yang appeared and addressed the Board on behalf of the California Department of Corrections and Rehabilitation.

Mary Lundeen, Staff Counsel III, explained that Rightway Site Services, Inc. (Rightway) sought compensation from the California Department of Corrections and Rehabilitation (CDCR) in the amount of \$65,699.98, including finance charges, for emergency sanitation equipment and services (portable toilets/service of toilets) provided to CDCR from August 11-26, 2011.

CDCR recommended that the claim be partially allowed in the amount of \$63,786.38 under authority of Government Code section 965 (agency pay).

Ms. Lundeen stated that Government Claims Program staff reviewed the claim and determined that it was complete and timely pursuant to Government Code sections 910 and 911.2. Rightway provided satisfactory services to CDCR and had not been compensated. The finance charge included in the claim amount represented a usual and customary business charge assessed to defray the costs of unpaid invoices borne by businesses. It was not a penalty assessment or interest penalty for unpaid invoices provided that are occasionally provided for contracted vendors for late payment under state law.

She stated that it was a reasonable expectation that CDCR staff was aware or should have been aware of costs of services and other terms when it requested and accepted service from Rightway, rather than use services from its contracted vendor. Based upon consideration of the facts of the claim, Government Claims Program staff recommended that the claim be allowed in the amount of \$65,699.98, the full amount requested, under authority of Government Code section 965 (agency pay).

Chairperson Lopez asked Ms. Lundeen if the only dispute between Rightway and CDCR was the finance charge in the amount of \$1,913.60, which CDCR was unwilling to compensate Rightway. Ms. Lundeen stated that Mr. Harding was requesting more than \$1,913.60.

Mr. Harding stated that at the time that Rightway submitted their claim, the amount claimed represented the interest rate that was set forth on the invoice; however, because of the lengthy 45-day processing time, the total amount due to date was \$71,440.78.

Ms. Yang stated that CDCR recommended partial payment of the invoice from Rightway in the amount of \$63,786.38; however, CDCR disputed the finance charges. She stated that CDCR requested the services from Rightway as a result of their vendor on contract being unavailable. Rightway was aware of the State contracting process and knew that no contract could be formed for the

agreement. She stated that when she spoke with a representative from Rightway in March, they were aware that CDCR's primary vendor was not available and Rightway agreed to provide services to CDCR.

Chairperson Lopez asked Ms. Yang whether CDCR's basis for recommending that no finance charges be paid was due to the fact that there was no contract in place.

Ms. Yang stated that there was no agreement with Rightway regarding the rates, which CDCR did not dispute. However, when CDCR received Rightway's invoice on September 6, they included a 1.5% interest charge as a term in the invoice, which was not discussed with CDCR and was not a part of the agreement.

Mr. Harding stated that the first invoice Rightway submitted to CDCR was sent on August 31 and did not include the finance charges. The finance charges accumulated at the end of the prior month and were included in the second invoice that was sent to CDCR. He stated that although the services Rightway provided to CDCR were emergency services, CDCR had the opportunity to contact their contracted vendor the following day. Rightway could have picked up their units and the vendor who had a contract with CDCR could have replaced the units. He stated that there was a signed contract agreement for the emergency work Rightway performed with the terms and conditions included. CDCR ordered more units and more service and never explained to Rightway that they were not a qualified contractor for the type of service they provided.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$65,699.98, the full amount requested, under authority of Government Code section 965 (agency pay).

Item 8. Claim of Shooting Star Solutions, LLC
Claim Number G603085

Mary Lundeen, Staff Counsel III, explained that Shooting Star Solutions, LLC requested payment from the California Department of Motor Vehicles (DMV) in the amount of \$156,192.00 for consulting services provided between September 1, 2011, and December 31, 2011.

DMV recommended that the claim be allowed in the amount of \$156,192.00, under authority of Government Code section 965 (agency pay).

Ms. Lundeen stated that Government Claims Program staff reviewed the claim and determined that it was complete and timely pursuant to Government Code sections 910 and 911.2. Shooting Star Solutions, LLC provided satisfactory services to DMV and has not been compensated. Based upon consideration of the facts, and the parties' mutual desire to settle the matter through the Board action, Government Claims Program staff recommended that the claim be allowed in the amount of \$156,192.00, under authority of Government Code section 965 (agency pay).

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$156,192.00 under authority of Government Code section 965 (agency pay).

Item 9. Claim of Sedgwick LLP
Claim Number G603353

Mellonie Yang appeared on behalf of the California Department of Corrections and Rehabilitation.

Mary Lundeen, Staff Counsel III, explained that Sedgwick LLP requested payment from the Department of Corrections and Rehabilitation (CDCR) in the amount of \$57,778.96 for legal services provided to CDCR for the period of March 1, 2010, through May 31, 2010.

CDCR recommended that the claim be allowed in the amount of \$57,778.96 under authority of Government Code section 965 (agency pay).

Ms. Lundeen explained that Government Claims Program (GCP) staff reviewed the claim and determined that it was complete and timely pursuant to Government Code sections 910 and 911.2. Based on its review of the claim and the recommendation from CDCR, GCP staff recommended that the claim be allowed in the amount of \$57,778.96 under authority of Government Code section 965 (agency pay).

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$57,778.96 under authority of Government Code section 965 (agency pay).

Item 10. Claim of Jonathan Sudduth
Claim Number G603821

John McDonough, Staff Counsel III, appeared on behalf of the California Highway Patrol.

Mary Lundeen, Staff Counsel III, explained that Jonathan Sudduth, dba Johnny Socket and HVAC, requested compensation from the California Highway Patrol in the amount of \$88,252.23 for late payment penalties on invoices for services performed during the period of June 1, 2009, through September 1, 2009.

Ms. Lundeen stated that the California Highway Patrol recommended that the claim be allowed in the amount of \$88,252.23 under authority of Government Code section 965 (agency pay).

Based on the facts of the claim and the recommendation provided by the California Highway Patrol, Government Claims Program staff recommended that the claim be allowed in the amount of \$88,252.23 under authority of Government Code section 965 (agency pay).

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$88,252.23 under authority of Government Code section 965 (agency pay).

Item 13. Request for Delegation of Authority Under Government Code Section 935.6
by the Department of General Services

Mary Lundeen, Staff Counsel III, explained that the Department of General Services requested that the Victim Compensation and Government Claims Board (Board) grant it delegated authority to settle and pay or reject claims that do not exceed \$1,000.00 each from July 1, 2012, through June 30, 2015.

Ms. Lundeen stated that the current delegation expires on June 30, 2012. The Department of General Services (DGS) requested an extension of the delegated authority for an additional three-year period, through June 30, 2015. She stated that during the most recent delegation period, DGS reported that it did not receive any claims of \$1,000.00 or less.

Ms. Lundeen stated that Government Claims Program staff recommended that the Board approve the request by DGS.

The Board voted to approve DGS' request for delegation of authority to settle and pay or reject claims that do not exceed \$1,000.00 each from July 1, 2012, through June 30, 2015.

Item 14. Applications for Discharge From Accountability for Collection

The item was removed from the agenda.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:31 a.m. Tisha Heard, Board Liaison, informed Board member Ramos that Chairperson Lopez and Board member Chivaro were adjourning into Closed Session. She thanked Board member Ramos for his participation in the meeting then terminated the teleconference call.

Closed Session

Pursuant to Government Code section 11126(c)(3), Chairperson Lopez and Board member Chivaro adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Staff Counsel III at 10:31 a.m. to deliberate on the proposed decisions numbers 1-180.

Open Session

The Board reconvened into open session at 10:35 a.m. The Board voted to adopt the proposed decisions for numbers 1-180.

The Board meeting adjourned at 10:35 a.m.